

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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ALTERRA AMERICA INSURANCE COMPANY,

Index No. 652813/2012 **E**

Plaintiff,

-against-

**AFFIRMATION OF
CHRISTOPHER R. CARROLL**

NATIONAL FOOTBALL LEAGUE AND NFL
PROPERTIES, LLC, et al.,

Defendants.

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DISCOVER PROPERTY & CASUALTY
COMPANY, et al.,

Index No. 652933/2012 **E**

Plaintiffs,

-against-

NATIONAL FOOTBALL LEAGUE, NFL
PROPERTIES LLC., et al.,

Defendants.

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CHRISTOPHER R. CARROLL, ESQ., an attorney duly admitted to practice before the courts of the State of New York, hereby affirms the following to be true and under penalty of perjury:

1. I am a partner of the law firm of Kennedys CMK LLP, counsel for Defendants TIG Insurance Company, The North River Insurance Company and United States Fire Insurance Company in the above-captioned matter (the “Coverage Action”). As such, I have personal

knowledge of the facts and circumstances contained herein, the source of my knowledge being the records and files maintained by my office in the ordinary course of handling this matter.

2. I respectfully submit this Affirmation in support of the Insurers' Memorandum of Law Seeking Partial Review of the Memorandum and Order of Special Referee Michael Dolinger with respect to the Insurers' Motion to Compel Production of Underlying Litigation and Settlement Materials.

3. The Insurers joining in this submission are as follows: TIG Insurance Company, The North River Insurance Company, United States Fire Insurance Company, Discover Property & Casualty Insurance Company, St. Paul Protective Insurance Company, Travelers Casualty & Surety Company, Travelers Indemnity Company, Travelers Property Casualty Company of America, Continental Insurance Company, Continental Casualty Company, Bedivere Insurance Company, ACE American Insurance Company, Century Indemnity Company, Indemnity Insurance Company of North America, California Union Insurance Company, Illinois Union Insurance Company, Westchester Fire Insurance Company, Federal Insurance Company, Great Northern Insurance Company, Vigilant Insurance Company, Munich Reinsurance America, Inc., XL Insurance America Inc., XL Select Insurance Company, American Guarantee and Liability Insurance Company, Arrowood Indemnity Company, Westport Insurance Corporation, and Allstate Insurance Company, solely as successor in interest to Northbrook Excess and Surplus Insurance Company, formerly Northbrook Insurance Company.

4. Attached hereto as Exhibit 1 is a true and accurate copy of the Insurers' Notice of Motion to Compel Production of Underlying Litigation and Settlement Materials from the National Football League and NFL Properties (the "NFL Parties") and the Insurers' Memorandum of Law in support of that motion filed before the Special Referee on August 21, 2018.

5. Attached hereto as Exhibit 2 is a true a correct copy of the Affirmation of Christopher R. Carroll filed in further support of the Insurers' Motion to Compel Production of Underlying Litigation and Settlement Materials from the NFL Parties, with the following exhibits, which were also submitted to the Special Referee on August 21, 2018:

- A. The Updated Analysis of the NFL Concussion Settlement report prepared by Thomas Vasquez, Ph.D. dated July 13, 2018.
- B. The Preliminary Conference Order entered in the Coverage Action on April 12, 2013.
- C. The Stipulation and Order for the Production and Exchange of Confidential Information entered by the Court in the Insurance Coverage Action on May 22, 2013.
- D. Transcript of proceedings held in the Coverage Action on November 16, 2015.
- E. Transcript of proceedings held in the Coverage Action on April 29, 2016.
- F. Decision and Order of the Court, denying the NFL Parties' Motion to Stay that was filed on November 1, 2016.
- G. Insurers' Second Omnibus Demand for Discovery and Inspection to the NFL Parties, dated February 1, 2017.
- H. Insurers' First Omnibus Demand for Discovery and Inspection to NFL Properties, LLC, dated May 10, 2013.
- I. Insurers' First Omnibus Demand for Discovery and Inspection to National Football League, dated May 10, 2013.

- J. NFL Parties' Objections and Responses to Insurers' Second Set of Document Requests, dated March 17, 2017.
- K. Copies of letters exchanged between the Insurers and the NFL Parties regarding, among other issues, the underlying defense and settlement materials dated May 31, 2017, August 22, 2017, October 11, 2017, November 2, 2017, and January 17, 2018.
- L. The joint letter of the NFL Parties and the Insurers to Mr. Tyler D. Evans, Esq., Law Clerk to the Honorable Andrea Masley, dated February 2, 2018.
- M. The NFL Parties' Amended Answer to Amended Complaint and Second Amended Counterclaims and Cross-Claims filed in the Insurance Coverage Action on February 15, 2017.

6. Attached hereto as Exhibit 3 is a true and accurate copy of the NFL Parties' opposition papers, with exhibits, submitted in opposition to the Insurers' Motion to Compel Production of Underlying Litigation and Settlement Materials, filed before the Special Referee on September 21, 2018. Exhibit 3 has been filed under seal pursuant to paragraph 13(c) of the Stipulation and Order for the Production and Exchange of Confidential Information entered by the Court on May 22, 2013.

7. Attached hereto as Exhibit 4 is a true and accurate copy of the Insurers' reply papers, with exhibits, submitted in further support of their Motion to Compel Production of Underlying Litigation and Settlement Materials, filed before the Special Referee on October 11, 2018.

8. Attached hereto as Exhibit 5 is a true and accurate copy of the NFL Parties' surreply papers, with exhibits, submitted in further opposition to the Insurers' Motion to Compel

Production of Underlying Litigation and Settlement Materials, filed before the Special Referee on October 23, 2018. Exhibit 5 has been filed under seal pursuant to paragraph 13(c) of the Stipulation and Order for the Production and Exchange of Confidential Information entered by the Court on May 22, 2013.

9. Attached hereto as Exhibit 6 is a true and accurate copy of the Insurers' response to the NFL Parties' surreply brief submitted in further support of their Motion to Compel Production of Underlying Litigation and Settlement Materials, filed before the Special Referee on October 29, 2018.

10. Attached hereto as Exhibit 7 is a true and accurate copy of the Order Appointing Referee to Supervise Disclosure Pursuant to CPLR 3104, dated April 30, 2018

11. Attached hereto as Exhibit 8 is a true and accurate copy of an email from Shavonne Applewhite, Assistant Manager to Special Referee Michael Dolinger, to Heather E. Simpson, Esq. and Michael Lechlitter, Esq., sent and received on February 28, 2019, attaching Special Referee Michael Dolinger's Memorandum and Order, dated February 26, 2019. Included within Exhibit 8 is a true and accurate copy of the Special Referee's Memorandum and Order.

Dated: New York, New York
March 14, 2019

By: /s/ Christopher R. Carroll
Christopher R. Carroll, Esq.